

**WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?** An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault or stalking as defined in RCW 41.04.655;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

(2) The condition(s) listed in subsection (1)(a) through (d) of this section is likely to cause, the employee to go on leave without pay status or terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC 357-31-435. ~~((If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.))~~

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

~~(6) (a) ((If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a))~~ Until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employer may permit an employee to receive shared leave as a result of the 2019 novel coronavirus (COVID-19). An employer should consider

whether one of the following circumstances exists in determining whether to grant shared leave under this subsection:

(i) The employee tests positive for COVID-19 or has symptoms of COVID-19 and is seeking a medical diagnosis;

(ii) The employee, or a relative or household member, is isolated or quarantined as recommended, requested or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to COVID-19;

(iii) The employee is considered under the criteria set by the Centers for Disease Control and Prevention (CDC) to be at increased risk of severe illness and death due to COVID-19;

(iv) The employee cannot work due to the closure of their child's school and/or the unavailability of a child care provider due to COVID-19; or

(v) The employee is not sick but has been advised by a health care provider not to be in the workplace due to risk of COVID-19 but does not fall into the CDC high risk categories.

(b) An employer may permit use of shared leave under this subsection without considering the other requirements of this section.

AMENDATORY SECTION (Amending WSR 19-05-055, filed 2/15/19, effective 3/29/19)

**WAC 357-31-395 What definitions apply to shared leave?** The following definitions apply to shared leave as defined in RCW 41.04.655:

(1) ~~((As defined in RCW 41.04.655,))~~ "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent, or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care ~~((, for a period of up to sixteen weeks after the birth or placement))~~.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) ~~((("Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.~~

~~(6-))~~ "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(6) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state

active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 10-11-074, filed 5/14/10, effective 6/15/10)

**WAC 357-31-400 How much shared leave may an employee receive?**

(1) The employer determines the amount of leave, if any, which an employee may receive under these rules. However, an employee must not receive more than five hundred twenty-two days of shared leave during total state employment. An employer may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. A nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is included in the five hundred twenty-two day limit.

(2) An employee receiving shared leave for parental leave in accordance with WAC 357-31-395 may receive up to sixteen weeks immediately after the birth or placement unless the birth parent suffers from a pregnancy disability. When a birth parent suffers from a pregnancy disability the period of sixteen weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child's life.

(3) An employee receiving industrial insurance wage replacement benefits may receive up to twenty-five percent of their base salary from the receipt of shared leave.

(4) Employers are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

NEW SECTION

**WAC 357-31-403 May an employer prevent an employee from using shared leave intermittently or on nonconsecutive days?** An employer may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 357-31-445.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

**WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit?** An employee may be required to submit

the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a nonprofit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

(8) For employees seeking shared leave under WAC 357-31-390(6), the employer may require written verification submitted electronically, confirming the circumstances of isolation or quarantine, that the employee is high risk, that no other suitable person is available to provide child care, or other circumstances listed in WAC 357-31-390 (6)(a)(i) through (v). This may include a signed affidavit from the employee, or any other information requested by the employer.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

**WAC 357-31-435 Must employees use their own leave before using shared leave?** (1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(~~((, sick leave and vacation leave))~~) and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(~~((, accrued vacation leave and paid military leave allowed under RCW 38.40.060))~~) and holiday credit before using shared leave. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday (~~((and vacation leave))~~) and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation leave and can maintain up to forty hours of vacation leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-797.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 (~~((and))~~), personal holiday and holiday credit before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

AMENDATORY SECTION (Amending WSR 18-03-080, filed 1/15/18, effective 2/16/18)

**WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?** Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, vacation leave, and paid military leave allowed under RCW 38.40.060 before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

AMENDATORY SECTION (Amending WSR 18-03-080, filed 1/15/18, effective 2/16/18)

**WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?** Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.